

Service Date: January 16, 2014

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of) REGULATORY DIVISION
NorthWestern Energy for Hydro Assets) DOCKET NO. D2013.12.85
Purchase) ORDER NO. 7323b

PROCEDURAL ORDER

1. On December 20, 2013, NorthWestern Corporation doing business as NorthWestern Energy (NorthWestern or NWE) filed an *Application for Approval to Purchase and Operate the Hydroelectric Facilities of PPL Montana, LLC, for Inclusion of Generation Assets Cost of Service in Electricity Supply Rates, for Issuance of Securities to Complete the Purchase, and for Related Relief* (Application) with the Montana Public Service Commission (Commission). The Commission has jurisdiction over this matter pursuant to Title 69 of the Montana Code Annotated. *See e.g.* Mont. Code Ann. § 69-8-421 (2013) (requiring “an order within 270 days of receipt of an adequate application” unless “extraordinary circumstances” necessitate additional time).

2. The Commission issued a *Notice of Opportunity for Early Intervention* on December 6, 2013, and granted intervention to the Montana Consumer Counsel on December 20, 2013. The Commission issued a *Notice of Application and Intervention Deadline and Initial Procedural Schedule* on December 23, 2013, and granted intervention to the following parties on January 14, 2014: (1) Confederated Salish & Kootenai Tribes; (2) Montana Large Customer Group; (3) Human Resource Council District XI, Renewable Northwest Project, and Natural Resources Defense Council (appearing jointly); and (4) Hydrodynamics, Inc.

3. The Commission, through delegation to staff, hereby establishes the Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of NorthWestern at any time. *Id.* at § 69-3-106. A party may seek reconsideration of this Order within ten (10) days of its service date. Admin. R. Mont. 38.2.4806 (2013).

Schedule

4. This Order sets the following procedural schedule for this Docket:
- (a) January 17, 2014: Final day for NorthWestern to respond to the Data Requests specified in the Notice of Commission Action issued January 9, 2014.
 - (b) January 24, 2014: Final day for NorthWestern to respond to Data Requests issued by January 3, 2014.
 - (c) February 3, 2014: Final day for the Commission to determine whether the Application is “adequate and in compliance with the commission's minimum filing requirements.” *Id.* at § 69-8-421(2).
 - (d) February 21, 2014: Final day for data requests to NorthWestern related to its Application.
 - (e) March 7, 2014: Final day for NorthWestern to respond to data requests issued on February 21, 2014. *See also supra* ¶ 8.
 - (f) March 28, 2014: Final day for intervenor testimony.
 - (g) April 4, 2014: *Final day for the Commission to identify additional issues.*
 - (h) April 11, 2014: Final day for data requests to intervenors.
 - (i) April 18, 2014: *Final day for additional issues testimony, if any.*
 - (j) April 25, 2014: Final day for intervenors to respond to data requests issued on April 11, 2014. *See also supra* ¶ 8.
 - (k) May 2, 2014: *Final day for additional issues data requests, if any.*
 - (l) May 9, 2014: Final day for NorthWestern to file rebuttal testimony and for intervenors to file cross-intervenor response testimony.
 - (m) May 16, 2014: *Final day for parties to respond to additional issues data requests, if any.*
 - (n) May 23, 2014: Final day for data requests to NorthWestern and intervenors related to rebuttal and cross-intervenor response testimony.
 - (o) May 30, 2014: *Final day for additional issues response testimony, if any.*
 - (p) June 6, 2014: Final day for NorthWestern and intervenors to respond to data requests related to rebuttal and cross-intervenor response testimony.
 - (q) June 9, 2014: *Final day for data requests related to additional issues response testimony, if any.*
 - (r) June 16, 2014: *Final day for parties to respond to data requests related to additional issues response testimony, if any.*
 - (s) June 20, 2014: Final day for NorthWestern and intervenors to file pre-hearing memoranda.

- (t) June 30, 2014: Final day to object to exhibits or data requests that a party intends to introduce (as indicated in prehearing memoranda).
- (u) July 3, 2014: Final day for the Commission to issue a pre-hearing memorandum.
- (v) July 8, 2014: Hearing commences and continues from day-to-day as necessary.
- (w) August 1, 2014: Final day for NorthWestern to file a post-hearing brief.
- (x) August 15, 2014: Final day for intervenors to file post-hearing response briefs.
- (y) August 25, 2014: Final day for NorthWestern to file a post-hearing reply brief.
- (z) September 16, 2014: Final day for Commission to issue an order unless "it determines that extraordinary circumstances require" additional time. *Id.* at § 69-8-421(4)(a).

Service and Filing

5. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Upon posting a Commission-generated document to the website, the Commission will e-mail the document to counsel of record. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Intervention

6. The deadline for intervention in this proceeding was January 10, 2014. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon

action of the Commission.

Discovery

7. “The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission.” Admin. R. Mont.

38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to NWE, PSC-009 through 016 to MCC, and PSC-017 through 019 again to NWE).
- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

8. Parties must respond to data requests within fourteen (14) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier.

9. A party may file an objection to a data request within ten (10) calendar days from service or by the deadline to respond, whichever is earlier. The Commission may schedule oral argument before ruling on an objection. The Commission will consider a party that does not object within the applicable deadline to have accepted the data request. If a party objects based on privilege, it must file a privilege log by the deadline to respond with sufficient information for the Commission to determine whether the privilege applies.

10. If a data request asks for trade secret information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.

11. Before filing a motion for an extension to respond or object to a data request, the party requesting the extension must ask the entity that issued the data request to waive the

applicable response deadline and agree to the extension (specifying the new deadline and particular data request(s) for which the extension is sought) within seven (7) calendar days of the service date of the data request. The entity that issued the data request should agree to extensions related to data requests that seek the production of documents or additional analyses unless doing so would unduly delay a subsequent deadline.

12. A party may submit a data request after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

13. If a response to a data request fails to answer the request, the discovering party may move within seven (7) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

14. In response to a party's failure to answer a data request, the Commission may: (1) Refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

Pre-hearing Motions, Conferences and Memoranda

15. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

16. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

17. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce (other than responses to data requests related to

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additional issues response testimony); (5) any special accommodations sought regarding witness sequence or scheduling. Each party's pre-hearing memorandum must also list any responses to data requests that the parties have collectively agreed to introduce. Whenever a party moves for the admission of a response to a data request, it must identify the number of the request.

Hearing

18. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

19. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

20. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

21. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

22. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DONE AND DATED this 16th day of January, 2014, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

W. A. (BILL) GALLAGHER, Chairman

BOB LAKE, Vice Chairman

KIRK BUSHMAN, Commissioner

TRAVIS KAVULLA, Commissioner

ROGER KOOPMAN, Commissioner